(2) Supreme Court, U.S.
FILED
JUL 16 2001

No. 01 531

IN THE
Supreme Court of the United States

FARM & GROVE REALTY COMPANY,
Petitioner

v.

BREVARD COUNTY, FLORIDA,
THE NATURE CONSERVANCY,
and KEVIN JUDD,
Respondents.

On Petition for Writ of Certiorari
to the Fifth District Court of Appeals
for the State of Florida

# APPENDIX VOLUME I TO PETITION FOR WRIT OF CERTIORARI

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IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN AND
FOR BREVARD COUNTY, FLORIDA
CASE NO. 96-4509-CA-D

FARM & GROVE REALTY
COMPANY, A Florida corporation,
Plaintiff,

vs.

BREVARD COUNTY, FLORIDA,
a political subdivision
of the State of Florida,
Defendant.

_____/

**ORDER**

The Defendant's Motion to Dismiss the Complaint having come on for consideration before the undersigned Judge on July 10, 1996, and the Court having heard the arguments of counsel for the respective parties, having reviewed the record in this cause, including Defendant's extensive memorandum brief, and being otherwise fully advised, finds as follows:

1. The Court has jurisdiction over the subject matter and parties to this action.

2. The thrust of Plaintiff's allegations fail to establish a "taking" by the Defendant because Plaintiff's allegations in fact show its property has viable economic use and value in the face of the Defendant's subject ordinances and that in the present posture of the allegations real doubt is cast upon whether Plaintiff's asserted claim is "ripe" for determination as a result of any dispositive action by the

Defendant. Vatalaro v. Department of Environmental Regulation, 601 So. 2d 1223 (Fla. 5th DCA 192 [sic]) and City of Rivera Beach v. Shillingburg, 659 So. 2d 1174 (Fla. 4th DCA 1995).

The premises considered, it is

**ORDERED and ADJUDGED** as follows:

1. Defendant's said Motion to Dismiss is denied as to Count I of the Complaint for declaratory relief.

2. Defendant's said Motion to Dismiss is granted as to all of the rest and remainder of the Counts in the Complaint.

3. Leave is granted to the Plaintiff to Amend its Complaint within twenty days from the date of this Order. The Defendant has forty days from the date of this Order within which to answer or otherwise respond to Count I of the Complaint if the same is not Amended by the Plaintiff, and if the same is Amended by the Plaintiff the Defendant has twenty days from date of service of the Amended Complaint within which to answer or otherwise respond to same.

**DONE and ORDERED** in Chambers at Viera, Brevard County, Florida, this 15th day of July, 1996.

/s/_____
EDWARD M. JACKSON
CIRCUIT JUDGE

Copies furnished to:

Edward C. Tietig, Esquire
1326 Malabar Road, S.E.,
Suite 1
Palm Bay, Florida 32907

Eden Bentley, Esquire
Brevard Cty. Asst. Atty
2725 St. John's Street
Viera, Florida 32940

/s/_____
Judicial Assistant
Date: 7-16-96

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR
BREVARD COUNTY, FLORIDA
CASE NO. 96-4509 CA-D

FARM & GROVE REALTY COMPANY,
Plaintiff,

v.

BREVARD COUNTY, a political subdivision of the State of Florida,
Defendant.

_____/

AND CASE NO: 96-14296-CA-X

FARM & GROVE REALTY COMPANY,
Plaintiff,

v.

BREVARD COUNTY, a political subdivision of the State of Florida,
THE NATURE CONSERVANCY, a non-profit District of Columbia Corporation, as agent of Brevard County and individually; and
KEVIN JUDD, as agent of Brevard County and of The Nature Conservancy, and individually,
Defendants.

_____/

**ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

THIS CAUSE came on to be heard on April 12, 1999 on the Defendants The Nature Conservancy("TNC") and

Kevin Judd's ("Judd") Motion for Summary Final Judgment dated January 26, 1999, and the Defendant Brevard County's Amended Motion for Summary Judgment dated February 26, 1999, and the Court having heard argument of counsel, having reviewed the evidence on file with this court, the answers to interrogatories, depositions, request for admissions and pleadings, and all of the proferred evidence, the Court finds as follows:

1. As to Count I of Plaintiff's Second Amended Complaint, the Court finds that disputed issues of material fact remain.
2. As to Counts II and III, there are no disputed issues as to material fact, and the Defendants are entitled to judgment thereon as a matter of law.

BASED THEREON, IT IS ADJUDGED AS FOLLOWS:

1. As to Count I of Plaintiff's Second Amended Complaint, Summary Judgment is Denied.
2. As to Counts II and III of Plaintiff's Second Amended Complaint, Summary Judgment is Granted.
3. The Court reserves jurisdiction to consider entitlement to, and amount of, attorneys fees and costs.

DONE AND ORDERED in Chambers in Viera, Brevard County, Florida this 29th day of April, 1999.

/s/

W. DAVID DUGAN
Circuit Judge

cc:

Edward C. Tietig, Esquire
1326 Malabar Road, SE,
Suite 1
Palm Bay, FL 32907

Eden Bentley, Esquire
Ass't County Att'y
2725 Judge Fran Jamieson Way
Viera, Florida 32940

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN AND
FOR BREVARD COUNTY, FLORIDA
CASE NO. 96-04509-CA-D

FARM & GROVE REALTY COMPANY
Plaintiff;

v.

BREVARD COUNTY, a political subdivision of the State of Florida,
Defendant.

and

CASE NO. 96-14296-CA-

FARM & GROVE REALTY COMPANY
Plaintiff;

v.

BREVARD COUNTY, a political subdivision of the State of Florida, THE NATURE CONSERVANCY, a non-profit District of Columbia corporation, as agent of Brevard County and individually; and KEVIN JUDD,
Defendants.

---

ORDER ON PLAINTIFF'S MOTION FOR REHEARING AND REMAINING ISSUES RE: PLAINTIFF'S MOTION TO STRIKE SUPPORT OF DEFENDANT'S MOTION FOR

This cause having come before the Court on July 9, 1999, upon Plaintiff's Motion for Rehearing and the Court having heard argument of counsel and being fully advised of the premises, it is hereby

ORDERED and ADJUDGED that Plaintiff's prior *Ore Tenus* Motion to Strike Brevard County's Memorandum of Law in Support of Defendant's Motion for Summary

Judgment is DENIED. It is further

ORDERED and ADJUDGED that Plaintiff's Motion for rehearing is DENIED.

DONE and ORDERED in Chambers, at Viera, Florida, this 21st day of July, 1999.

/s/

W. DAVID DUGAN
Circuit Court Judge

I HEREBY CERTIFY that a conformed copy of the foregoing has been furnished to Edward C. Tietig, P.A., 1326 Malabar Rd S.E., Suite 1, Palm Bay, Florida, 32907, Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1700 Palm Beach Lakes Blvd., Suite 1000, West Palm Beach, Florida, 33401, and Scott L. Knox, County Attorney, 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, this 21st day of July, 1999.

/s/

Judicial Assistant

\pleadings\frm&grv\rehrg_ord.wpd

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FIFTH DISTRICT
JANUARY TERM 2001

FARM & GROVE REALTY COMPANY,
Appellant,

v.

CASE NO. 5D99-2355 &
5D00-649

BREVARD COUNTY, etc., et al.,
Appellees.

---

Decision filed April 17, 2001
Appeal from the Circuit Court
for Brevard County
W. David Dugan, Judge.
Lisa Kuhlman Tietig and Mark E. Tietig
of Tietig & Tietig, Merritt Island,
for Appellant.
Scott L. Knox, County Attorney,
Viera, for Appellee, Brevard County.
Kevin S. Hennessy and Eric B. Ash
of Lewis, Longman & Walker, P.A.,
West Palm Beach, for Appellees, The
Nature Conservancy and Kevin Judd.
PER CURIAM.

AFFIRMED.

SHARP, W., and PETERSON, JJ., and MONACO, D.,
Associate Judge, concur.

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA
CASE NOS. 96-4509 CAD
96-14296 CAX

FARM & GROVE REALTY COMPANY,
Plaintiff,
v.
BREVARD COUNTY, a political
subdivision of the State of Florida,
Defendant,
and
FARM & GROVE REALTY COMPANY,
Plaintiff,
BREVARD COUNTY, et al.,
Defendants.
_____/

FINAL JUDGMENT

THIS CAUSE came on to be heard before the Court, without jury, and on the evidence presented, the Court finds as follows:

A. Based upon the evidence presented, the Court does not find that a physical taking has occurred.

B. As to Plaintiff's claim that a regulatory taking has occurred, the Court, likewise, finds that no regulatory taking has occurred. Plaintiff acquired the property in its present configuration without any reasonable expectation that the property could be feasibly developed. Plaintiff was fortunate to have sold many of the lots to buyers who purchased the property, even though the property was not contiguous, and without existing roads. The County did not, however, have

any obligation to build roads or provide a mechanism by which the roads could be constructed in an economically feasible manner. The real problem is that the Plaintiff purchased 1,320 lots, spread over a twenty-five (25) acre area, which lots are not contiguous. Therefore, to develop the parcels would require the Plaintiff to construct a road that would benefit not only Plaintiff's parcels but also parcels owned by other owners, without Provision for sharing the cost. This was a risk that Plaintiff took when it purchased the property, however, and was not created by the regulations of the Defendant. Defendant, Brevard County, had no duty to enact or continue to utilize the MSBU Ordinance, therefore. Furthermore, it is not the MSBU ordinance that imposes the purported burden on the Plaintiff. The unpaved road ordinance is what precludes development without first meeting the dictates of the ordinance. That ordinance, exhibit 31 for the Plaintiff, is a reasonable exercise of the police power and has not been applied in an arbitrary manner. Nor does it regulate to the point of an unconstitutional taking. Plaintiff has cited no authority for the proposition that the court can force the county to implement the MSBU method of infrastructure funding, and its lack of use does not give rise to a taking.

C. As to Plaintiff's contention that the characterization of the lands as scrub habitat somehow effected a taking, the Court fails to see how the Defendant, Brevard County, can be responsible for the impact of regulations related to endangered species. Moreover, on the evidence presented, even if the County were responsible, it is difficult to determine what impact, if any, the Endangered Species Act has on the subject parcels. No evidence was presented as to the existence of any scrub jays on any of the parcels, nor has Plaintiff ever applied for a permit to clear the subject parcels. Finally, even if the

County were responsible for the impact of the Endangered Species Act, the evidence does not support that a taking occurred in that the regulation does not deny substantially all economically beneficial or productive use of the land. Tampa-Hillsborough Expressway v. AGWS, 640 So.2d 54 (Fla. 1994)

D. As to the County's efforts to acquire these lands through the C.A.R.L. program, the Court does not find from the evidence that these efforts amount to a taking. See, Division of Administration. State of Florida. v. Frenchmen, 476 So.2d 224 (Fla. 4th DCA 1885); Farish v. South Florida Water Management District, 515 So.2d 365 (Fla. 4th DCA 1987).

E. The Court has carefully reviewed the cases cited by Plaintiff. In particular, the Court has reviewed Drake Bay Company v. The United States, 424 Fed.2d 574 (1970) and Althaus v. The United States, 7 Cl.Ct. 688 (1995), and finds these cases to be distinguishable from the facts presented at bar.

F. Although the court has sympathy for the Plaintiff's situation, under the prevailing authorities, the court does not believe the county is obligated to purchase Plaintiff's property under an inverse condemnation theory.

Based upon the foregoing, it is

ORDERED AND ADJUDGED that:

1. Plaintiff shall take nothing in this action and that Defendant shall go hence without day.

2. Jurisdiction is reserved for taxation of costs.

DONE AND ORDERED in Chambers, Titusville, Brevard County, Florida, this 14th day of February, 2000.

/s/

VINCENT G. TORPY, JR.
Circuit Court Judge

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, sec. 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ORDINANCE NO. 80- 50

PROVIDING FOR THE ISSUANCE OF BUILDING PERMITS ON PRIVATE ROADS WITHIN THE UNINCORPORATED AREAS OF BREVARD COUNTY, FLORIDA; REPEALING PRESENT SECTION 61(a) AND SECTION 61(b) APPENDIX C-ZONING, BREVARD COUNTY CODE; CREATING SECTION 6-11, BREVARD COUNTY CODE; RELETTERING PRESENT SECTIONS 61(c), 61(d), 61(e), 61(f), 61(g), AND 61(h) TO APPENDIX C-ZONING, BREVARD COUNTY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

Section 1. REPEALER

Section 61(a) and Section 61(b), Appendix C-Zoning, Brevard County Code, as those sections presently exist, are hereby repealed.

Section 2. CREATION OF NEW SECTION

Section 6—11 of the Brevard County Code is hereby created to read as follows:

Section. 6—11. Issuance of Building Permits.

(a) No building permit shall be issued for use on a parcel, unless (1) that parcel abuts on a street, road or easement dedicated to and accepted by the Board of County Commissioners of Brevard County, or (2) the owner of the parcel has a perpetual, irrevocable right of access to a street, road or easement dedidated to and accepted by the Board of County Commissioners of Brevard County, and complies with

the provisions of Subsection (b) of this Section, and the permit is for a single family dwelling and accessory structures thereto.

(b) Where a parcel does not abut on a street, road or easement dedicated to and accepted by the Board of County Commissioners of Brevard County, no building permit shall be issued until the following requirements are met in addition to any other requirements which may exist:

1. The private right of access from the parcel to a County street, road or easement must be evidenced by a legally sufficient instrument recorded in the Public Records of Brevard County granting such perpetual and irrevocable right of access. Said private access shall not include a street, road or easement dedicated to the public or the County by a plat or other recorded instrument.

2. The private access must be at least twenty feet (20') wide.

3. The private access route must be cleared and graded and maintained in such condition as will allow access by emergency vehicles.

4. The private access route must not prohibit public access to any dedicated and accepted County road right-of-way in the area.

5. Public officials in the performance of their duties, public utilities and emergency vehicles shall be granted use of said private access route at all times.

6. No more than two (2) building permits shall be issued to utilize a single private access route out to a street, road or easement dedicated to and accepted by the Board of County Commissioners of Brevard County without the authorization of the Board.

(c) The Board of County Commissioners may, in

its discretion, authorize the issuance of up to four (4) additional building permits to utilize a single private access route out to a street, road or easement dedicated to and accepted by the Board, provided that, in addition to the requirements of Subsections (b)1, (b)3, (b)4, and (b)5 of this Section 6-11, the private access route must be at least twenty-five feet (25') wide; the property must be platted in accordance with subdivision regulations of Brevard County; and each parcel for which a building permit is authorized must have an area of at least one-half (1/2) acre. In making such determination, the Board shall consider the following factors:

i) Whether the failure to issue a permit will work an undue hardship on a petitioner,

ii) The character and type of development in relation to the adjacent area,

iii) The geographic characteristics of the property.

(d) No building permits shall be issued pursuant to Subsections (a), (b), and (c) of this Section for a parcel or development plan that comes within the definition of subdivision contained in Brevard County Code, Appendix B-Subdivisions and Plats, unless, for a particular subdivision, the Board has waived the provisions of Brevard County Code, Appendix B- Subdivisions and Plats, relating to road design, construction and maintenance.

Section 3. RELETTERING OF PRESENT SECTIONS

Sections 61(c), 61(d), 61(e), 61(f), 61(g), and 61(h), Appendix C-Zoning, Brevard County Code, as those Sections presently exist, are hereby relettered as follows:

Section 61(c) of Appendix C to Section 6-11(e), Brevard County Code

Section 61(d) of Appendix C to Section 6-11(f), Brevard

County Code

Section 61(e) of Appendix C to Section 6-11(g), Brevard County Code

Section 61(f) of Appendix C to Section 6-11(h), Brevard County Code

Section 61(g) of Appendix C to Section 61, Appendix C-Zoning, Brevard County Code

Section 61(h) of Appendix C to Section 6-11(i), Brevard County Code

Section 4. RETITLING OF NEW SECTION 61

Section 61 is hereby retitled "FLAG LOTS".

Section 5. EFFECTIVE DATE

This Ordinance shall take effect pursuant to law.

DONE AND ORDAINED, in regular session, this 4th day of December, 1980.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA.

By: /s/
Val M. Steele, Chairman

ATTEST:

/s/
R.C. Winstead, Jr., Clerk

(SEAL)

# ORDINANCE 91-08

AN ORDINANCE OF BREVARD COUNTY, FLORIDA CREATING PROVISIONS FOR THE ISSUANCE OF BUILDING PERMITS ON PRIVATE ROADS, UNPAVED ROADS AND INGRESS/EGRESS EASEMENTS TO PUBLIC ROADS; AMENDING ARTICLE II OF CHAPTER 14, "ZONING AND BUILDING REGULATIONS" BY CREATING A NEW DIVISION 4 ENTITLED "ISSUANCE OF BUILDING PERMITS ON UNPAVED ROADWAYS AND ACCESS EASEMENTS"; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 6-11 of the Brevard County Code requires that property abut a public street in order for a building permit to be issued on the subject property; and

WHEREAS, Section 6-11 provides an exception for parcels which do not abut on a public street if a parcel meets the criteria set forth for private roads or ingress/egress easements; and

WHEREAS, Brevard County wishes to expand the criteria for the use of unpaved roads for building permit purposes in rural residential areas; and

WHEREAS, Brevard County also wishes to place limitations on the use of unpaved roads to allow limited growth in the rural areas while preventing urban sprawl.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Chapter 14, Article II, Brevard County

Code, is hereby amended to establish a new Division 4, entitled "Issuance of. Building Permits on Unpaved Roadways and Access Easements" which reads as follows:

CHAPTER 14. LAND DEVELOPMENT REGULATIONS

ARTICLE II. ZONING AND BUILDING REGULATIONS

Division 4. Issuance of Building Permits an Private Roads, Unpaved Roadways and Access Easements

(A) Definitions.

For the purposes of this section, the following definitions shall apply:

(1) Access: An easement or other perpetual and irrevocable right of ingress or egress, which has been recorded in the public records of Brevard County, Florida.

(2) Flag lot: Any lot, plot, tract or parcel of land having a narrow, deeded, strip of land connecting the main body of said lot, plot, tract or parcel to a dedicated and accepted road, as defined in the Brevard County Zoning Regulations.

(3) Private road: A road, street or right-of-way utilized by the abutting properties only, which road, street, or right-of-way is not dedicated, accepted, or maintained by Brevard County.

(4) Public street: Any street, road, or easement dedicated to and accepted by the Board of County Commissioners of Brevard County, Florida, built to the specifications for paved or unpaved roads adopted by Brevard County, Florida, and maintained by Brevard County.

(5) Single-family residence: A private residence building used or intended to be used as a home or residence in which the use and management of all sleeping quarters, all appliances for sanitation, cooking, ventilation, heating and lighting are designed primarily for the use of one family unit.

(6) Unpaved Road: Any road stabilized to a Limerock

Bearing ratio of 40 (LBR 40) and constructed in an existing public right of way.

(B) Criteria for Issuance of Building Permits.

(1) Except as specifically provided in this section, no building permits shall be issued by Brevard County for use on a parcel, unless that parcel abuts on a public street, as defined herein.

(2) Exceptions: For parcels which do not abut on a public street, building permits may be issued for said parcels, in the following circumstances:

(a) Private Roads: Building permits for single-family residential structures, and appurtenant structures, may be issued for parcels utilizing private roads within recorded subdivisions, where such private roads connect directly to a public street, and where said private road is shown on a subdivision platted and recorded in the public records of Brevard County, Florida, and if, in the opinion of the Board of County Commissioners of Brevard County, Florida, the private road meets the following requirements:

1. That the private road must be constructed to those design specifications set forth in the Brevard County Subdivision Regulations and maintained by the applicant or homeowner's association; and

2. That the private road shall not restrict public access to any Brevard County right-of-way, or preclude or obstruct any existing or planned public road or street systems; and

3. Public utilities and emergency vehicles shall be granted the use of the private road, and, under no circumstances, shall such use be restricted; and

4. The private road shall not include a street, road, right-of-way, or easement dedicated to Brevard County or "the

public."

(b) Access by Easement: Building permits for single-family residential structures, and appurtenant structures, may be issued for parcels which do not abut on a public street, when it can.be shown that the parcel has access to a public street through a perpetual and irrevocable right of access, and such access shall not include a street, road, right-of-way or easement dedicated to Brevard County or "the public" by a plat or other recorded instrument; provided, however, that the following criteria have been met:

1. That the parcel is of unique dimension or character, such that direct access by abutting on a public street is not feasible; and

2. That the parcel cannot be established as a flag lot, pursuant to the provisions of the Brevard County Zoning Regulations; and

3. That the access is at least twenty (20) feet wide; and

4. That the access is cleared, graded and maintained so as to assure access by emergency vehicles; and

5. That the access is not within a flag lot access strip, except where said flag lot is five (5) acres or more in size; and

6. That the access is for the exclusive use of the parcel for which the building permit is to be issued; and

7. That the access is not within ninety (90) feet of the nearest private access utilized for building permit purposes under this section.

(c) Unpaved Road Agreements: The Board of County Commissioners and the property owners whose property abuts a right-of-way which is not maintained by the County may enter into an agreement to allow the issuance of a single family

residence structure building permits under the following conditions:

1. These agreements shall be limited to existing County rights-of-way.

2. Only those properties within one-quarter mile of a County maintained roadway are eligible.

3. Individual lots, parcels or tracts of land must have a minimum area of 0.9 acre to be eligible to enter into an unpaved road agreement with the County.

4. Each lot, parcel or tract of land must meet all of the requirements of the Comprehensive Plan, shall satisfy all criteria of the Consumer Health Division and shall meet all the requirements of the Office of Natural Resources prior to issuance of a building permit.

5. There shall be a limitation of one agreement per property owner which is not transferable, and shall have a time limitation of one year.

6. By entering into the agreement, the property owner is responsible for all costs related to the roadway including survey, design, engineering, permitting, and construction. The roadway would be designed and stabilized to a minimum of LBR40 and would be reviewed and inspected by the County Engineer or his designee, for approval prior to the issuance of a building permit. Additionally, to defer the cost of County maintenance, the agreement shall stipulate a fixed amount that must be paid prior to execution of the agreement. This amount would be determined by the Transportation Department and adopted by Resolution in an amount necessary to reimburse Brevard County for maintenance costs.

7. Upon entering into the agreement, the property owner shall also agree that once more than fifty percent (50%)

of the buildable lots have been issued building permits, the property owner will participate in a Municipal Service Benefit Unit (MSBU) for paving of the road.

8. Where the subject roadway on which the agreement applies intersects with an existing County maintained dirt road, and where all buildable lots abutting the subject roadway are 2.5 acres or larger in area, the property owner would not be required to participate in the establishment of a Municipal Service Benefit Unit (MSBU) for paving of the street.

(C) Application procedure.

Any person seeking the issuance of a building permit, under the provisions of this section, shall submit an application with the Brevard County Development Review Department, on such form as provided by the Brevard County Development Review Department, together with such application fee as may be adopted by resolution by the Board of County Commissioners of Brevard County, Florida. Said application shall be in addition to, and submitted in conjunction with an application for building permit, submitted to the Brevard County building official, under the provisions of Chapter 6, Code of Brevard County, Florida. Said application shall include, at a minimum, the following:

(1) A copy of the deed or instrument indicating current ownership of the parcel; and

(2) A copy of the deed' or instrument indicating applicant's interest in the subject parcel; and

(3) A copy of the Brevard County property appraiser's map of the subject parcel, indicating all properties within five hundred (500) feet of the subject parcel.

(D) Review.

Any applicant who is aggrieved by any decision by the Director

of the Brevard County Development Review Department, that the subject parcel does not comply with the criteria set forth in this section, may, within thirty (30) days after the date of the decision of the Development Review Department Director, or his designee, apply to the Board of County Commissioners of Brevard County, Florida, for review of the Director's decision.

SECTION 2. Conflicting Provisions. In the case of direct conflicts between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulatio.n, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Effective Date. This ordinance shall take effect pursuant to general law.

DONE, ORDERED AND ADOPTED in Special Session, this 26th day of June, 1991.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

/s/_____

By: Sue Schmitt, Chairman

ATTEST:

/s/_____

R.C. Winstead, Jr., Clerk

(SEAL)

ORDINANCE NO.91- 12

AN ORDINANCE OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 21, "TAXATION", BREVARD COUNTY CODE OF LAWS AND ORDINANCES; SPECIFICALLY ESTABLISHING A NEW ARTICLE ENTITLED "MUNICIPAL SERVICE BENEFIT UNITS; PROVIDING FOR DEFINITIONS; PROVIDING FOR ESTABLISHMENT OF BENEFIT UNITS AND COLLECTION OF ASSESSMENTS; PROVIDING FOR POWERS AND DUTIES RELATING TO THE ACQUISITION AND CONSTRUCTION OF PROJECTS, FINANCING AND ISSUANCE OF BONDS; PROVIDING FOR THE METHOD OF ESTABLISHING ASSESSMENTS; PROVIDING FOR THE METHOD OF COLLECTION OF ASSESSMENTS; PROVIDING FOR THE ISSUANCE OF BONDS PROVIDING FOR SEVERABILITY; PROVIDING FOR AN ALTERNATIVE METHOD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1 of the Florida Constitution, and Sections 125.01 and 125.66, Florida Statutes, the Board has all powers of local self-government to perform county functions and to render services in a manner not inconsistent with general law and such power may be exercised by the enactment of county ordinances; and

WHEREAS, Section 125.01(1)(q), Florida Statutes, provides specific legislative authorization to establish a municipal service benefit unit for any part or all of the unincorporated areas within its boundaries within which may be provided streets, sidewalks, street lighting, drainage, potable water, sanitary sewer and other essential facilities and

improvements; and

WHEREAS, the purpose of this Ordinance is to (i) provide procedures and standards for the imposition of certain Assessments within municipal service benefit units established by the County, for capital projects to be located within existing government or utility controlled rights of ways and easements, and (ii) authorize the issuance of Bonds secured by the subject Assessments to finance the cost of projects within the Benefit Units.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

SECTION 1. Chapter 21, Article IV, Code of Brevard County, Florida, is hereby established as follows:

CHAPTER 21. TAXATION.

ARTICLE IV. MUNICIPAL SERVICE BENEFIT UNITS

**SECTION 21-40. DEFINITIONS.**

As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires. The terms "herein," "hereunder," hereby," "hereto," "hereof," and any similar terms, shall refer to this Ordinance; the term "heretofore," shall mean before the date of adoption of this Ordinance; and the term "hereafter" shall mean after the date of adoption of this Ordinance.

Words importing the masculine gender include every other gender.

Words importing the singular number include the plural number, and vice versa.

(1) **"Assessment"** means a non-ad valorem assessment lawfully imposed by the County for the payment of

costs in accordance with the terms of this Ordinance against properties specially benefited [sic] by an individual Project or several Projects.

(2) **"Assessment Coordinator"** means the person designated by the Board to be responsible for coordinating Assessments within a Benefit Unit or such person's designee.

(3) **"Assessment Roll"** means a non-ad valorem assessment roll relating to an Assessment, approved by a Final Assessment Resolution as required by Section 21-43(7) hereof.

(4) **"Board"** means the Board of County Commissioners of Brevard County, Florida.

(5) **"Bonds"** means the bonds or other obligations issued or incurred by the County pursuant to Section 21-45 hereof, payable from the pledged revenues.

(6) **"Clerk"** means the Clerk of the Circuit Court of Brevard County, ex-officio Clerk of the Board, or any Deputy Clerk.

(7) **"Cost"** means, as applied to any Project, (a) the cost of physical construction, reconstruction or completion, (b) the costs of acquisition or purchase, (c) the cost of all labor, materials, machinery and equipment, (d) the cost of all lands and interest therein, property rights, easements and franchises of any nature whatsoever, (e) the cost of any indemnity or surety bonds and premiums for insurance during construction, (f) interest prior to and during construction, for such period of time after completion of the construction or acquisition of such Project as the Board deems appropriate, and for such period of time after the issuance of the Bonds and Notes as may be necessary to collect the initial annual installment of Assessments, (g) amounts necessary to pay redemption premiums or other costs associated with the early retirement of Bonds and Notes related to the Project, (h) the creation of

reserve or debt service funds, (i) costs and expenses related to the issuance of Bonds and Notes related to the Project, all financing charges and any expenses related to any liquidity facility or credit facility, including interest on Bonds and Notes held by the issuer of such liquidity facility or credit facility, (j) the cost of construction plans and specifications, surveys and estimates of costs, (k) the cost of engineering, financial, legal and other consultant services associated with the Project, (1) the cost of engineering, financial, legal and other consultant services and any other cost associated with the structure, implementation and collection of Assessments, including any service charges of the Clerk, Tax Collector or Property Appraiser and amounts necessary to off-set discounts received for early payment of Assessments pursuant to applicable law, and (m) all other costs and expenses properly attributable to such acquisition or construction, and such other expenses as may be necessary or incidental to any financing authorized by this Ordinance, including a reasonable contingency amount; and including reimbursement of the County or any other person, firm or corporation for any moneys advanced for any costs incurred by the County or such person, firm or corporation in connection with any of the foregoing items of cost.

(8) **"County"** means Brevard County, Florida.

(9) **"Final Assessment Resolution"** means the resolution described in Section 21-43(7) hereof which shall confirm or deny the Initial Assessment Resolution and which shall be the final proceeding for the imposition of an Assessment.

(10) **"Benefit Unit"** means a municipal service benefit unit established by Section 21-41 hereof and any other municipal service benefit unit subsequently established by

Ordinance of the County incorporating the terms and provisions hereof by reference.

(11) **"Initial Assessment Resolution"** means the resolution described in Section 21-43(2) hereof which shall be the initial proceeding for the imposition of Assessments.

(12) **"Notes"** means (a) the proceeds of the Bonds, including investment earnings, (b) proceeds of the Assessments, as specified by the resolution authorizing the Bonds, and any other non-ad valorem revenues or other legally available moneys specifically pledged by the County under the resolution authorizing the Bonds.

(13) **"Pledged Revenues"** means (a) proceeds of the Assessments, as including investment earnings, (b) proceeds of the Assessments, as specified by the resolution authorizing the Bonds, and any other non-ad valorem revenues or other legally available moneys specifically pledged by the County under the resolution authorizing the Bonds.

(14) **"Project"** means road, drainage, water, sewer and canal dredging and maintenance, or other capital improvements located within existing government or utility controlled rights of ways or easements within the Benefit Unit.

(15) **"Project Appraiser"** means the Property Appraiser of the County.

(16) **"Tax Collector"** means the Tax Collector of the County.

(17) **"Tax Rolls"** means the real property ad valorem tax assessment roll maintained by the Property Appraiser of the County for the purpose of the levy and collection of ad valorem taxes.

**SECTION 21-41. ESTABLISHMENT OF MUNICIPAL SERVICE BENEFIT UNITS.**

(1) APPLICATION TO BENEFIT UNITS.

Municipal service benefit units may be brought within the scope of this Ordinance by specifically referencing and incorporating the terms of this Ordinance in the ordinance creating such municipal service benefit unit.

(2) CHANGES IN BENEFIT UNIT BOUNDARIES. Nothing in this Ordinance shall be construed to prohibit the adoption of a future ordinance changing the boundaries of any Benefit Unit. The expansion or contraction of any Benefit Unit shall not invalidate any Assessment properly imposed hereunder; provided however, that the Board shall comply with the procedures set forth herein prior to imposing any Assessment against property not previously subject thereto.

**SECTION 21-42. POWERS AND DUTIES.**

(1) PROJECTS. The Board shall have the following authority and powers within the benefit units with respect to the acquisition and construction of Projects:

(a) to acquire, improve and construct Projects;

(b) to acquire in the name of the County, either by purchase or the exercise of the right of eminent domain by the County, such lands and rights and interests and to acquire such personal property as may be deemed necessary in connection with the acquisition and construction of the Projects;

(c) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Ordinance, and to employ such consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other employees, contractors and agents as may, in the judgment of the Board, be deemed necessary or convenient and to fix their compensation;

(d) to pay out of any funds that may be available

for that purpose such portion of the costs associated with any Project as it may deem proper; and

(e) to exercise any and all of the powers of the County not enumerated above necessary or incidental for the purpose of providing the services, improvements and benefits described herein.

(2) ASSESSMENTS AND BONDS. The Board shall have the following authority and powers within the Benefit Units with respect to financing the costs of the Projects:

(a) to impose and collect Assessments in the manner provided herein;

(b) to authorize and issue Bonds payable from Pledged Revenues to finance the cost of the Projects in the manner provided in this Ordinance;

(c) to authorize and issue Notes to finance the cost of the Project payable from the moneys described in Section 21-45(5) hereof; and

(d) to exercise any and all of the powers of the County not enumerated above necessary or incidental for the purpose of providing the services, improvements and benefits described herein.

**SECTION 21-43. ASSESSMENTS.**

(1) GENERAL AUTHORITY. The Board may provide for the cost of an individual Project or several Projects through imposition, in the Benefit Unit in which such Projects are located, of Assessments upon benefited [sic] property within the Benefit Unit at a rate of assessment based on the special benefit accruing to such property from such Project or Projects. Assessments shall be assessed in conformity with the procedures set forth in this Article IV. The computation of Assessments may be made on the basis of a general

methodology designed to provide the maximum achievable equity among properties within each Benefit Unit, which methodology shall be applied uniformly against all similar properties. Nothing contained in this Ordinance shall be construed to require the imposition of Assessments against property in public ownership.

(2) INITIAL PROCEEDINGS. The initial proceeding for imposition of an Assessment shall be the passage by the Board of an Initial Assessment Resolution ordering the acquisition, construction or reconstruction of assessable improvements constituting an individual Project or several Projects, indicating in general, the location (the location may be established by reference to boundaries or a map or by reference to the Benefit Unit) and description of such improvements, which shall be sufficient to enable the Assessment Coordinator to prepare or cause preparation of the preliminary plans and specifications of such improvements as described in subsection (3) hereof. The Initial Assessment Resolution may also state the portion, if any, of the Project to be paid by the County and shall state the estimated costs of the Project, if available, and the method of assessment which may be by frontage, acreage, square footage, parcel or any other combination thereof or any other method deemed equitable by the Board. The improvements constituting the Project or Projects need not be contiguous and may be in more than one locality or street. The Initial Assessment Resolution ordering any such improvement may give any short and convenient designation to each improvement ordered thereby. Notice of the Board's intent to impose the Assessments shall be recorded in the Official Records Book in the office of the Clerk. Such notice shall provide in general the locations of the property which are assessed and direct interested parties to the Initial Assessment

Resolution.

(3) PLANS AND SPECIFICATIONS. For any Project that has not yet been constructed, the Assessment Coordinator shall, as soon as possible after the passage of the Initial Assessment Resolution, prepare or cause preparation of, preliminary plans, specifications and cost estimates for the improvements constituting the Project. The plans and specifications need only be in sufficient form to enable the Assessment Coordinator to estimate or cause estimation of the costs of the Project and prepare the Assessment Roll.

(4) ASSESSMENT ROLL. The Assessment Coordinator shall also prepare or cause preparation of the Assessment Roll, which shall contain the following:

(a) A summary description of lots and parcels of land or land within the Benefit Unit (conforming to the description contained on the Tax Roll) which will benefit from such assessable improvements constituting the Project or Projects and the amount of such benefits to each such lot or parcel of land.

(b) The name of the owner of record of each lot or parcel as shown on the Tax Rolls.

(c) The total cost of the improvements to be assessed against each benefited [sic] lot or parcel.

Such plans, specification, cost estimates and the Assessment Roll shall be provided to the Clerk and retained by the Assessment Coordinator and shall be open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Assessment for each parcel of property can be determined by use of a computer terminal available at each location.

(5) NOTICE BY PUBLICATION. The Assessment Coordinator, upon the filing of such plans,

specifications, cost estimates and Assessment Roll, shall publish once in a newspaper of general circulation, published and circulating in the County, a notice stating that at a meeting of the Board on a certain day and hour, not earlier that [sic] 20 calendar days from such publication, which meeting shall be a regular, adjourned or special meeting, the Board will hear objections of all interested persons to the Final Assessment Resolution which shall approve the aforementioned plans, specifications, cost estimates and the Assessment Roll. If the Assessments are to be collected in the same bill as ad valorem taxes, the published notice shall conform to the requirements set forth in Sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes. Such notice shall include (a) a geographic depiction of the property subject to the Assessment, (b) a brief and general description of the applicable Project with the location thereof (location may be established by reference to boundaries or a map or by reference to the Benefit Unit), (c) the procedure for objecting provided in subsection (6) hereof, and (d) a statement that plans, specification, cost estimates and the Assessment Roll, which shall include the method or methods of assessment, are available for inspection at the offices of the Clerk and the Assessment Coordinator and all interested persons may ascertain the amount to be assessed against a lot or parcel of property at the offices of the Clerk and the Assessment Coordinator.

(6) NOTICE BY MAIL. In addition to the published notice required by subsection (5), the Assessment Coordinator shall provide notice by first class mail to each property owner proposed to be assessed. If the Assessments are to be collected on the same bill as ad valorem taxes, the mailed

notice shall conform to the requirements set forth in Sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes. Notice shall be mailed at least 20 calendar days prior to the hearing to each property owner at such address as is shown on the Tax Rolls. Notice shall be deemed mailed upon delivery thereof to the possession the U. S. Postal Service. The Assessment Coordinator may provide proof of such notice by affidavit.

(7) ADOPTION OF FINAL ASSESSMENT RESOLUTION. At the time named in such notice, or to which an adjournment or continuance may be taken by the Board, the Board shall receive any written objections of interested person and may then or at any subsequent meeting of the Board adopt the Final Assessment Resolution which shall (a) approve the aforementioned plans, specifications and cost estimates, with such amendments as it deems just and right; (b) repeal or confirm the Initial Assessment Resolution with such amendments, if any, as may be deemed appropriate by the Board; (c) approve the Assessment Roll, including the method of assessment, with such amendments as it deems just and right; and (d) establish the interest rate or the method of determining the rate of interest which the Assessments shall bear, including the date from which such interest shall accrue, and the terms of prepayment, if any. Assessments shall be levied against all property in the applicable Benefit Unit specially benefited [sic] by the Project or Projects. The Board shall not approve any Assessment in excess of the special benefits to the property assessed, and the Assessments so approved shall be in proportion to the special benefits. All objections to the Final Assessment Resolution shall be made in writing, and filed with the Clerk at or before the time or

adjourned time of such hearing.

(8) EFFECT OF FINAL ASSESSMENT RESOLUTION. Assessments shall be established upon adoption of the Final Assessment Resolution. The adoption of the Final Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the method of assessment, the Assessment Roll, the plans and specifications, the estimated cost of the Project, the levy and lien of the Assessments and the interest rate the Assessments shall bear, including the date from which such interest shall accrue, and the terms of prepayments of the Assessments) unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Board action on the Final Assessment Resolution. Notice of the Assessments shall be recorded in the Official Records Book in the office of the Clerk. Such notice shall provide in general the locations of the property which are assessed and direct interested parties to the Assessment Roll, upon approval thereof. The Final Assessment Resolution shall provide for the rate of interest or the method of determining the rate of interest which the Assessments shall bear, including the date from which such interest shall accrue. The amount of the Assessment against any lot or parcel which may be reduced or abated, unless the non-ad valorem assessment upon the entire Benefit Unit be reduced or abated, may be made chargeable against the applicable Benefit Unit.

(9) PAYMENT OF ASSESSMENTS. Except as otherwise provided by resolution of the Board, no prepayments of Assessments shall be accepted prior to the adoption of the Final Assessment Resolution. Thereafter, any prepayments shall be made only upon payment of applicable interest, including interest included as a cost of the related

improvement, and applicable prepayment premium at the office of the Clerk (or such other official as the Board shall designate by resolution to collect Assessments). The Clerk (or such other official as the Board shall determine by resolution) shall note (mechanically or electronically) on the Assessment Roll any prepayments. The Board, by resolution, may determine the time during which prepayments may be made and amount of interest (which may include interest from the date of such prepayment to the date on which Bonds or Notes may be redeemed) and prepayment premium payable at the time of payment. If not prepaid, all Assessment shall be payable in equal principal installments (unless otherwise provided by resolution of the Board), with interest on the outstanding balance at the rate and from the date set by the Final Assessment Resolution. Assessments shall be collected in the manner set forth in Section 21-44 hereof. Subject to the provisions of subsection (10) and (11) hereof, if Bonds or Notes are issued pursuant to the Ordinance, the Assessments shall bear interest at a rate not to exceed two percent above the true interest cost of such Bonds or Notes (provided the true interest cost on the Bonds and Notes may include any ongoing expenses related to the Bonds and Notes and collection of the Assessments), from the date the Final Assessment Resolution is adopted or such other date as the Board may provide by resolution, payable in each of the succeeding number of years which the Board shall determine by resolution; provided, however, that the Board may provide by resolution that any Assessment may be paid at any time before due, together with any applicable prepayment premium and interest accrued thereon to the date of payment or such later date as shall be determined by the Board by resolution, if such prior payment shall be permitted by the proceedings authorizing any Bonds or

Notes for the payment of which such Assessment shave [sic] been pledged.

(10) LIEN OF ASSESSMENTS. All Assessments shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such liens shall be superior in dignity to all other liens, titles and claims, until paid.

(11) ADDITIONAL PAYMENTS. If Assessments made under the provisions of this Ordinance to defray the costs of the Project shall be deemed by the Board to be inadequate to meet the obligation owed to Bondholders and to pay fees required for credit enhancement on the Bonds, if any, the Board may adjust the payment period of the rate of interest on installment payments of the Assessment so that payments of Assessments shall be sufficient to satisfy the contractual obligation owed to Bondholders and the credit enhancement provider. However, such adjustment shall not have the effect of increasing the Assessment of any property, including the effect of increasing the amount of Assessment of any property in proportion to the amount of benefits conferred on that property. Further, the Board, in adjusting the interest rates and the period of payment of Assessments, shall follow the provisions of this Section 21-43 providing for passage of resolutions establishing Assessments.

(12) REVISIONS TO ASSESSMENTS.

(a) If any Assessment made under the provisions of this Ordinance to defray the costs of any Project shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Board shall be satisfied that any such Assessment is so irregular or defective that the same cannot be enforced or collected, or if the Board shall have

omitted to include any property on the Assessment Roll which properly should have been so included, the Board shall take all necessary steps to cause a new Assessment to be made against any property benefited [sic] by any Project, following as nearly as may be practicable the provisions of this Ordinance and in case such second Assessment shall be annulled, the Board may obtain and make other Assessments until a valid Assessment shall be made.

(b) If the actual cost of the Project exceeds the estimated cost on which the Assessments were based, the Board may, at its option, increase the amount of the Assessment against all benefited [sic] properties within the Benefit Unit, following as nearly as may be practicable the provisions of this Ordinance and in case such increased Assessment shall be annulled, the Board may obtain and make other Assessments until a valid Assessment shall be made.

(c) If the actual cost of the Project is less than the estimated cost on which the Assessments were based, the Board shall reduce the Assessments to an amount consistent with the actual cost of the Project. Interest paid in respect of the Assessments prior to any such reduction shall not be affected; however, interest payments following any such reduction shall reflect the reduced principal amount of the Assessments. If any Assessment has been prepaid in full prior to the date of any such reduction, the amount of the reduction applicable to such Assessment shall be refunded to the owner of the assessed property as of the date of prepayment; provided however, that the County shall not be required to refund an amount less than $5.00 to any single owner.

(13) PROCEDURAL IRREGULARITIES. Any informality or irregularity in the proceedings in connection with the levy of any Assessment under the provisions of this

Ordinance shall not affect the validity of the same after the approval thereof, and any Assessment as finally approved shall be competent and sufficient evidence that such Assessment was duly levied, that the Assessment was duly made and adopted, and that all other proceedings adequate to such Assessment were duly had, taken and performed as required by the Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this subsection (13) any party objecting to an Assessment imposed pursuant to this Ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

(14) APPORTIONMENT OF ASSESSMENTS. The County may, by resolution, provide a procedure by which the lien of an Assessment on property may be apportioned between subdivided parcels of such property. Such apportionment shall be reflected on the Assessment Roll. The County may establish a different procedure of apportioning and Assessment lien for each Benefit Unit. The County shall not establish a procedure which has a material adverse effect on the security for Bonds issued to finance the Project related to such Assessments.

(15) CORRECTION OR ERRORS AND OMISSIONS.

(a) No act of error or omission on the part of the Property Appraiser, Tax Collector, Clerk, Assessment Coordinator, Board or their deputies or employees, shall operate to release or discharge any obligation for payment of an Assessment imposed by the Board under the provision of this Ordinance. Any errors or omissions may be corrected at any time by the Board, or its designee, and when so corrected

shall be considered valid ab initio and shall in no way affect the enforcement of the Assessment imposed under the provisions of this Ordinance.

(b) When it shall appear that any Assessment should have been imposed under this Ordinance against a lot or parcel of property specially benefited [sic] by the project, but that such property was omitted from the Assessment roll, the Board may, upon provision of appropriate notice as set forth in this Section 21-43, impose the applicable Assessment against such benefited [sic] property. The Assessment so imposed shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district or municipal taxes and non-ad valorem assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property involved and may be recorded as provided in subsection (7) and collected as provided in Section 21-44 hereof.

(c) The Board shall have the authority at any time, upon its own initiative or in response to a timely filed petition from the owner of any property subject to an Assessment, to correct any error or omission in the adoption of any Assessment roll, or in the implementation of this Ordinance, including, but not limited to, and error in inclusion or exclusion of any property.

**SECTION 21-44. COLLECTION OF ASSESSMENTS.**

(1) RESPONSIBILITY FOR ENFORCEMENT. It shall be the duty of the County and its agent, if any, to enforce the prompt collection of Assessments by the means herein provided. The duties related to collection of Assessments may be enforced at the suit of any holder of Bonds secured by such Assessments in a court of competent jurisdiction by mandamus or other appropriate proceedings or

action.

(2) COLLECTION BY FORECLOSURE. The County shall have the right to appoint an agent to foreclose and collect all delinquent Assessments in the manner provided by law. An Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The County or its agent shall cause notice to be sent to any property owner who is delinquent in payment of his Assessment installment within 40 days from the date such installment was due. Such notice shall state in effect that the County or its agent shall initiate a foreclosure action within 90 days of the date of the installment due date if it is not paid. Between the 75th and 90th day after the due date of the delinquent property to be foreclosed in the method now or hereafter provided by law for foreclosure of mortgages on real estate, or otherwise as provided by law. Commencing on the 90th day after the due date of the delinquent installment, the County or its agent shall declare the entire unpaid balance of the Assessment to be in default and cause the delinquent property to be foreclosed as described above. Any Board action required in the collection of Assessments may be by resolution. All costs, fees and expenses, including reasonable attorney fees, related to any foreclosure action as described in Section 5.02 hereof shall be borne by the delinquent property owner. At the sale pursuant to decree in any such action, the County may be the purchaser to the same extent as an individual person or corporation.

(3) JOINDER OF ACTIONS. The County may join in one action the collection of Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent property owners whose property is foreclosed shall pay reasonable costs and expenses incurred by the County

and its agents, including reasonable attorney fees, in collection of such delinquent Assessments and any other costs incurred by the County as a result of such delinquent Assessments (including costs paid for draws on a credit facility), and the same shall be collectible as a part of or in addition to, the costs of the action.

(4) PAYMENT DURING FORECLOSURE PROCEEDINGS. If prior to any sale of the property under decree of foreclosure in such proceedings, payment is made of the amounts then due pursuant to the Final Assessment Resolution, and all costs, fees and expenses of the County and its agent, as a result of such delinquent Assessments, including reasonable attorney fees and costs for draws on a credit facility, such payment, unless otherwise provided by resolution of the Board, shall have the effect of restoring any remaining installments in respect of an Assessment to their original maturities and the proceedings shall be dismissed.

(5) USE OF ALTERNATIVE COLLECTION METHOD. In the event the Board utilizes the alternative method of collection of Assessments as described in subsection (6) hereof, the provisions of subsections (1) through (4) hereof shall be superseded to the extent of any conflict with applicable law or any agreement between the County and the Property Appraiser or Tax Collector relating to such alternative method. The County shall provide such information to the Property Appraiser and the Tax Collector as shall be necessary to collect the Assessments pursuant to such alternative method.

(6) COLLECTION BY TAX COLLECTOR. As an alternative method to collection by the Clerk as provided in subsections (1) through (4) hereof, the Board may, either at the public hearing held pursuant to subsection (7) hereof or at such other time as it deems appropriate, authorize the

collection of Assessments in the manner provided for the collection of ad-valorem taxes. Such alternative method shall be authorized by resolution of the Board and the County shall comply with all applicable provisions of law relating to such alternative method, including Section 197.363, 197.3631 and 197.3632, Florida Statutes, and any successor provision thereto. In the event such alternative method is used by the County, the provisions hereof shall be superseded to the degree of any conflict with applicable law or with any agreement between the County and the Property Appraiser or the Tax Collection [sic] relating to such alternative method. Any hearing or notice required by the Ordinance may be combined with any other hearing or notice required to collect the Assessments on the same bill as ad valorem taxes. Assessments relating to an individual Project shall be collected either by the method described in subsection (1) through (4) hereof or in this subsection (6), not be [sic] both methods.

**SECTION 21-45. ISSUANCE OF BONDS.**

(1) GENERAL AUTHORITY. Upon adoption of the Final Assessment Resolution or at any time thereafter, the Board shall have the power and it is hereby authorized to provide by resolution, at one time or from time to time in series, for the issuance of Bonds of the County for the purpose of paying all or part of the cost of the Projects. The principal of the interest on each series of Bonds shall be payable from Pledged Revenues. At the option of the Board, the county may covenant to budget and appropriate from non-ad valorem revenue sources identified by the County by resolution or from General non-ad valorem revenues of the County an amount necessary to make up any deficiency in the payment of the Bonds. The County may issue a single series of Bonds to finance Projects in different Benefit Units, provided such

resolution identifies each Project to be financed and the Benefit Unit in which it is located.

(2) TERMS OF THE BONDS. The Bonds shall be dated, shall bear interest at such rate or rates, shall mature at such times, as may be determined by resolution of the Board, and may be made redeemable before maturity, at the option of the County, at such price or prices and under such terms and conditions as may be fixed by the Board. Said Bonds shall mature not later than two years after the last installment in which said Assessments may be paid, as provided in Section 21-43(9) hereof, and shall bear interest at a rate not exceeding the maximum rate provided by law. The Bonds may, at the option of the Board, bear interest at a variable rate. The Board shall determine by resolution the form of the Bonds, the manner of executing such Bonds, and shall fix the denomination or denominations of such Bonds, the place or places of payment of the principal and interest, which may be at any bank or trust company within or without the State of Florida, and such other terms and provisions of the Bonds as it deems appropriate. The bonds may be sold at public or private sale for such price or prices as the Board shall determine by resolution. The Bonds may be delivered to any contractor for payment for his work in constructing a Project or may be sold in such manner and for such price as the Board may determine by resolution to be for the best interests of the County.

(3) VARIABLE RATE BONDS. The County may, at its option, issue Bonds bearing a variable rate of interest, whereupon the interest rate and installment payments applicable to Assessments shall be subject to adjustment as provided by resolution of the Board. In such event, the County may impose on such annual installment payment such rate of

interest as shall not exceed the maximum amount permitted by Section 21-43(9) hereof as shall be determined on the 15th day prior to the date the Assessment Roll is certified for collection to the Clerk or the Tax Collector, as appropriate. If amounts of interest collected by the County exceed, in the aggregate, the amount of interest that would have been collected if interest was imposed at the maximum rate permitted to be charged on Assessments as provided in Section 21-43(9) hereof, the excess amounts shall be credited to the next installment of the Assessment or be returned to the property owners who paid such amounts, as provided by resolution of the Board. If the amounts of interest collected by the County are less, in the aggregate, than the amount of interest that would have been collected if interest was imposed at the maximum rate permitted to be charged on Assessments as provided in Section 4.09 hereof, such deficiency may be imposed as a surcharge on the next installment.

(4) TEMPORARY BONDS. Prior to the preparation of definitive Bonds of any series, the Board may, under like restriction, issue interim receipts, interim certificates, or temporary bonds, exchangeable for definitive Bonds when such bonds have been executed and are available for delivery. The Board may also provide for the replacement of any Bonds which shall be come mutilated, or be destroyed or lost. Bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by the Ordinance.

(5) BOND ANTICIPATION NOTES. In anticipation of the sale of Bonds, the County may, by resolution, issue Notes and may renew the same from time to time. Such Notes may be paid from the proceeds of the Bonds,

the proceeds of the Assessments, the proceeds of the Notes and such other legally available moneys as the Board deems appropriate. Said Notes shall mature within five years of their issuance and shall bear interest at a rate not exceeding the maximum rate provided by law. The Board may issue Bonds or renewal Notes to repay the Notes. The proceeds of the Bonds and Notes, unless otherwise used to refund Bonds or Notes, shall be used to pay the costs of the Projects. The Notes shall be issued in the same manner as the Bonds.

(6) NEGOTIABLE INSTRUMENTS. Bonds and Notes shall be, and shall be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the Bonds and Notes for registration.

(7) TAXING POWER NOT PLEDGED. Bonds issued under the provisions of this Ordinance shall not be deemed to constitute a pledge of the faith and credit of the County or any Benefit Unit, but such Bonds shall be payable only from Pledged Revenues in the manner provided herein and by the resolution authorizing the Bonds. The issuance of Bonds under the provisions of this Ordinance shall not directly or indirectly obligate the County or any Benefit Unit to levy or to pledge any form of ad valorem taxation whatever therefore. No holder of any such Bonds shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the County or any Benefit Unit to pay any such Bonds or the interest thereon or to enforce payment of such Bonds or the interest thereon against any property of the County or any Benefit Unit, nor shall such Bonds constitute a charge, lien or encumbrance, legal or equitable, upon any property of the County or any Benefit Unit, except the Pledged Revenues.

(8) SECURITY FOR BONDS. During any period in which Bonds are outstanding, the Pledged Revenues shall be

deemed to be funds held for the benefit of Bondholders, to be held and applied solely as provided in this Ordinance and in the resolution authorizing the Bonds.

(9) REMEDIES OF BONDHOLDERS. Any holder of Bonds, except to the extent of rights herein given may be restricted by the resolution authorizing issuance of the Bonds, may, whether at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution, and may enforce and compel the performance of all duties required by this part, or by such resolution, to be performed by the County.

(10) NO REFERENDUM REQUIRED. No referendum or election in the County or any Benefit Unit shall be required for the exercise of any of the provisions of this Ordinance, unless such referendum or election is required by the Constitution of the State of Florida.

(11) REFUNDING BONDS. The County may, by resolution of the Board, issue Bonds to refund any Bonds issued pursuant to this Ordinance and provide for the rights of the holders hereof. Such refunding Bonds may be issued in an amount sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the outstanding Bonds to be refunded. In the event the principal amount of the refunding Bonds shall be greater than the outstanding principal amount of the Bonds to be refunded, the Board may increase the non-ad valorem assessments which secure such refunding Bonds up to an amount not to exceed the difference between the respective principal amounts of the refunding Bonds and the outstanding refunded Bonds, provided notice to the affected property owners is given in accordance with the notice provisions of Section 21-43 hereof

and a public hearing is held by the Board.

**SECTION 2. SEVERABILITY.** The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

**SECTION 3. ALTERNATIVE METHOD.** This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. The Ordinance, being necessary for the welfare of the inhabitants of the County, shall be liberally construed to effect the purposes hereof.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its adoption and filing as provided by law.

**DONE, ORDERED AND ADOPTED** in regular session this 23rd day of July 1991.

Board of County Commissioners
of Brevard County, Florida

/s/_____
Sue Schmit, Chairman

ATTEST:

/s/_____
R.C. Winstead, Jr., Clerk

(SEAL)

ORDINANCE NO. 93-27

AN ORDINANCE OF BREVARD COUNTY, FLORIDA, CREATING PROVISIONS FOR THE ISSUANCE OF BUILDING PERMITS ON PRIVATE ROADS, UNPAVED ROADS, AND INGRESS/EGRESS EASEMENTS TO PUBLIC ROADS; AMENDING ARTICLE II OF CHAPTER 14, "ZONING AND BUILDING REGULATIONS" BY CREATING A NEW DIVISION 4 ENTITLED "ISSUANCE OF BUILDING PERMITS ON UNPAVED ROADWAYS AND ACCESS EASEMENTS;" PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 14, Article II, Division 4, Brevard County Code, requires that property abut a public street in order for a building permit to be issued on the subject property; and

WHEREAS, Chapter 14, Article II, Division 4, Brevard County Code, provides an exception for parcels which do not abut on a public street if a parcel meets the criteria set forth for private roads or ingress/egress easement; and

WHEREAS, Brevard County wished to expand the criteria for the uses of unpaved road to allow limited growth in rural residential areas while preventing urban sprawl; and

WHEREAS, Brevard County wished to provide similar provisions for easements and flag stems.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Chapter 14, Article II, Brevard County Code, is hereby amended to establish a new Division 4, entitled "Issuance of Building Permits on Unpaved Roadways and

Access Easements" which reads as follows:

CHAPTER 14. LAND DEVELOPMENT REGULATIONS

ARTICLE II. ZONING, SUBDIVISION, AND SITE PLAN REGULATIONS, PRIVATE ROAD REGULATIONS

(A) Definitions.

For the purposes of this Section, the following definitions shall apply:

1. Access: An exclusive easement or other exclusive perpetual and right of ingress or egress, for all parcels eligible under this ordinance which has been recorded in the Public Records of Brevard County, Florida.
2. Flag Lot: Any lot, plot, tract, or parcel of land having a narrow, deeded strip of land connecting the main body of said lot, plot, tract, or parcel to a dedicated, accepted road, as defined in the Brevard County Zoning Regulations.
3. Private Road: A road, street, or right-of-way utilized by the abutting properties only, which road, street, or right-of-way is not dedicated, accepted, or maintained by Brevard County.
4. Public Street: Any street, road, or easement dedicated to and accepted by the Board of County Commissioners of Brevard County, Florida, built to the specification for paved or unpaved roads adopted by Brevard County, Florida, and maintained by Brevard County.
5. Single-Family Residence: A private residence building used or intended to be used as a home or residence in which the use and management of all sleeping quarters, all appliances for sanitation, cooking, ventilation, heating, and lighting are designed primarily for the use

of one family unit.

6. Unpaved Road: Any road stabilized to a lime rock bearing ratio of 40 (LBR 40) and provide a stormwater system which would be reviewed and constructed in an existing public right-of-way. All construction should be completed in accordance with the Subdivision and Site Plan Regulations, current stormwater ordinance, and landclearing regulations.

(B) Criteria for Issuance of Building Permits.

1. Except as specifically provided in this Section, no building permits shall be issued by Brevard County for use on a parcel, unless that parcel abuts on a public street, as defined herein.

2. Exceptions: For parcels which do not abut on a public street, building permits may be issued for said parcels in the following circumstances:

(a) Private Roads: Building permits for single-family residential structures, and appurtenant structures, may be issued for parcels utilizing private roads within recorded subdivisions, where such private roads connect directly to a public street, and where said private road is shown on a subdivision platted and recorded in the Public Records of Brevard County, Florida, and if, in the opinion of the Board of County Commissioners of Brevard County, Florida, the private road meets the following requirements:

1. That the private road must be constructed to those design specifications set forth in the Brevard County Subdivision Regulations and maintained by the applicant or homeowners association; and

2. That the private road shall not restrict public access to any Brevard County right-of-way, or preclude or obstruct any existing or planned public road or street systems; and

3. Public utilities and emergency vehicles shall be granted the use of the private road, and, under no circumstances, shall such use be restricted; and

4. The private road shall not include a street, road, right-of-way, or easement dedicated to Brevard County or "the public."

(b) Access by Easement: Building permits for single-family residential structures, and appurtenant structures, may be issued for parcels which do not abut on a public street, when it can be shown that the parcel has access to a public street through a perpetual and irrevocable right of access, and such access shall not include a street, road, right-of-way or easement dedicated to Brevard County or "the public" by a plat or other recorded instrument; provided, however, that the following criteria have been met:

1. That the parcel is of unique dimension or character, such that direct access by abutting on a public street is not feasible; and

2. That the parcel cannot be established as a flag lot, pursuant to the provisions of the Brevard County Zoning Regulations; and

3. That the access is at least twenty-five (25) feet wide; and

4. That the access is cleared, graded and

maintained so as to assure access by emergency vehicles; and

5. That the access is not within a flag lot access strip, except where said flag lot is five (5) acres or more in size; and

6. That the access is for the exclusive use of the parcel for which the building permit is to be issued, except as stated in 8; and

7. That the access is not within ninety (90) feet of the nearest private access easement utilized for building permit purposes under this Section.

8. That the access is for no more than two parcels. The sum of the parcels served by the easement shall be a minimum of five (5) acres in size.

9. No more than two easements will be allowed per access strip.

10. Only one easement shall be permitted over any flag stem.

11. This easement ordinance shall not apply to any prior easements approved by Brevard County and designated on Brevard County Zoning maps.

(c) Unpaved Road Agreements: The Board of County Commissioners and the property owners whose property abuts a right-of-way which is not maintained by the County may enter into an agreement to allow the issuance of a single-family residence structure building permit under the following conditions:

1. These agreements shall be limited to existing County rights-of-way of at least fifty feet (50')

in width. If a right-of-way exists of less than fifty feet (50') in width, additional easements, dedicated to Brevard County, may be obtained on each side of the right-of-way by the owner for drainage and sidewalk purposes to bring the total width to fifty feet (50').

Any requests for deviation shall be made as part of the application process and will be reviewed by the Land Development Division and the Engineering Office for a determination.

The waiver to access width shall not be approved unless it is consistent with the intent and purpose of the Dirt Road Ordinance including the following:

A. The particular physical conditions, shape, or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the ordinance is carried out;

B. The granting of the waiver will not be injurious to the other adjacent property;

C. The conditions upon which a request for waiver are based are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant; and

D. The waiver is consistent with the intent and purpose of the Brevard County Zoning Regulations, the County Land Use Plan of Brevard County, and the requirements of this ordinance.

E. For the preservation of vegetation as identified on a vegetation plan as long as engineering and safety concerns are satisfied.

Any acquisition costs associated with the right-of-way and easements will be borne solely by the property owner. The traveling surface of the road will be centered within the right-of-way.

2. Only those properties within 1,320' of a County maintained roadway are eligible.

3. Individual lots, parcels or tracts of land must have a minimum area of 0.9 acre to be eligible to enter into an unpaved road agreement with the County.

4. Each lot, parcel or tract of land must meet all of the requirements of the Comprehensive Plan, shall satisfy all criteria of the Consumer Health Division, and shall meet all the requirements of the Natural Resources Division and land clearing regulations to issuance of a building permit.

5. There shall be a limitation of one agreement per property owner which is not transferable, and shall have a time limitation of one year.

6. By entering into an agreement, the property owner is responsible for all costs related to the roadway including survey, design, engineering, permitting, and construction. The roadway would be designed and stabilized to a minimum of LBR 40 and would be reviewed and inspected by the County Engineer or his designee, for approval prior to the issuance of a building permit. Additionally, to defer the cost of County maintenance, the agreement shall stipulate a fixed amount that must be paid prior to execution of the agreement. This amount

would be determined by the Transportation Department and adopted by resolution in an amount necessary to reimburse Brevard County for maintenance costs.

7. Upon entering into the agreement, the property owner shall also agree that once more than fifty percent (50%) of the buildable lots have been issued building permits, the property owners will participate in a Municipal Service Benefit Unit (MSBU) for paving of the road.

8. Where the subject roadway on which the agreement applies intersects with an existing County maintained dirt road, and where all buildable lots abutting the subject roadway are 2.5 acres or larger in area, the property owner would not be required to participate in the establishment of a Municipal Service Benefit Unit (MSBU) for paving of the street.

(C) Application Procedure.

Any person seeking the issuance of a building permit, under the provisions of this Section, shall submit an application with the Brevard County Building and Development Department, on such form as provided by the Brevard County Building and Development Department, together with such application fee as may be adopted by resolution by the Board of County Commissioners of Brevard County, Florida. Said application shall include, at a minimum, the following:

(1) A copy of the deed or instrument indicating current ownership of the parcel; and

(2) A copy of the deed or instrument indicating applicant's interest in the subject parcel; and

(3) A copy of the Brevard County Property

Appraiser's map of the subject parcel, indicating all properties within five hundred feet (500') of the subject parcel.

(4) A copy of the land clearing application and plan of the limits of clearing. (Note: Fees are not required but notification of surrounding owners may be required."

(D) Review.

Any applicant who is aggrieved by any decision by the Director of the Brevard County Land Development Division that the subject parcel does not comply with the criteria set forth in this Section, may, within thirty (30) days after the date of the decision of the Land Development Division Director, or his designee, apply to the Board of County Commissioners of Brevard County, Florida, for review of the Director's decision.

SECTION 2. Conflicting Provisions. In the case of direct conflicts between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code, or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Effective Date. This ordinance shall take effect pursuant to general law.

DONE, ORDERED AND ADOPTED, in special session, this 10th day of November , 1993.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
/s/Karen S. Andreas, Chairman
ATTEST:
/s/Sandy Crawford, Clerk

Brevard County
Board of County Commissioners
Florida's Space Coast

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Sandy Crawford, Clerk to the Board, 700 Park Avenue,
Titusville, Florida 32780
Bernadette S. Talber, Deputy Clerk (407)264-5240
October 19, 1994

**MEMORANDUM**

TO: Tom Lundeen, Engineering Projects Management Director

RE: Proposed MSBU Ordinance and Financing Options for Privately-initiated Infrastructure Projects in Undeveloped Areas

The Board of County Commissioners, in regular session on October 18, 1994, directed the MSBU mechanism not be used to fund private development; directed staff to report to the Board on Option 2, the cost reimbursement program; approved an administrative fee of 10% with 1% to go to the Finance Department; endorsed the proposed resolution establishing schedule of fees and charges; and directed staff to bring back different options concerning minimum percentage of support required to implement an MSBU, with waiver provisions. Enclosed is a copy of the Agenda Report.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SANDY CRAWFORD, CLERK
/s/Bernadette Talbert, Deputy Clerk

Encl.(1)

cc: Community Development Administrator
Engineering Director

IN THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

FARM & GROVE REALTY COMPANY,

Plaintiff, Case No. 96-4509-CAD

v.

BREVARD COUNTY, a political subdivision of the State of Florida,

Defendant.

_____/

**ACTION FOR DECLARATORY RELIEF AND DAMAGES FOR TAKING OF REAL PROPERTY AND FOR DENIAL OF CIVIL RIGHTS**

Comes Now the Plaintiff, Farm & Grove Realty Company (Farm & Grove), by and through its undersigned attorney; and brings this Action for Declaratory Relief, for Damages For Taking of Real Property and for Denial of Civil Rights against the Defendant, Brevard County (County) and says:

1. Plaintiff, Farm & Grove, is a Florida corporation with its principal place of business in Brevard County, Florida. Defendant, County, is a political subdivision of the State of Florida. Venue is proper in this court.

2. This suit pertains to the validity of Ordinances, Resolutions, Rules and Policies as they pertain to Plaintiff's real property located in Brevard County. The amount in controversy exceeds the sum of $15,000; exclusive of interest, costs and fees.

3. At all times pertinent hereto, Farm & Grove was the owner of a 1.5 acre parcel of land located near Valkaria Road in unincorporated Brevard County, which parcel is known as Tract 184 of Cape Kennedy Estates, and legally described as:

The east half of the south 200 feet of the north 3/4 of

Lot 5, Section 23, Township 29 South, Range 37 East; per plat of Florida Indian River Land Co., as recorded In Plat Book 1, at Page 165, Brevard County, Florida; less the east 25 feet for road, utility and drainage right of way.

4. The character of the area is rural residential and there are a number of homes presently built and occupied in the area. Zoning is AU, "Agriculture".

5. Farm & Grove paid an agreed market price for the parcel and had a reasonable, investment-backed expectation of profit therefrom. The parcel is served by a duly recorded road easement to connect it to Valkaria Road; however, no road presently exists nor was any road required of the original subdivider by Defendant County upon the creation of this subdivision, nor at the time Farm & Grove acquired its interest in the property.

6. Defendant, County, asserts governmental jurisdiction and control over the real property and has enacted ordinances and has undertaken other governmental actions to control the use and enjoyment of the property.

7. Plaintiff wishes to sell the property as a single-family residential lot so as to realize its reasonable, investment-backed expectation. This use is the only reasonable use for the property allowed by the zoning and is not only the highest and best use thereof but also the only practical use.

8. That among the rules and regulations imposed after the acquisition of the property by Plaintiff was the requirement that all homes thereafter constructed in Brevard County would be served by a county-approved road. (Ordinance 82-6, Exhibit A hereto.)

9. Because of the ordinances and regulations

supplementing same, a road approximately 993 feet in length is required. The construction of the road would allow 9 other lot owners to obtain permits to construct homes where such right does not presently exist without these other owners paying for and installing all or a portion of the road improvements.

10. Plaintiff's lot presently is unmarketable and substantially valueless because of the actions complained of. The neighboring lots have the same approximate value. When the road is installed, this lot and each of the other 9 lots would have a fair market value of approximately $35,000 each if served by a paved road and approximately $26,000 each if served by an unpaved road.

11. In order to construct paved roads within the county the creation of a special tax district (MSBU) is required pursuant to Article II, Section 98-36 of Brevard County Code, (Exhibit B hereto) (the MSBU Ordinance). Under this plan 100% of the road cost is apportioned among the benefitted lots and an assessment lien for the apportioned amount is levied upon each lot.

12. The County Commission has, by formal Resolution, (Exhibit C hereto), denied the use of the MSBU ordinance to undeveloped areas such as the subject property. So, while Farm & Grove is required to have its land served by a county owned and approved road in order to be useable and saleable, it is denied the ability to seek a paved road, even if all of the cost thereof is borne not by the County at large but only by these benefitted lot owners.

13. Therefore, the only other course remaining open to Farm & Grove to obtain a road is to have an unpaved road permitted and installed at Farm & Grove's sole expense and responsibility. This is required by County Ordinance 93-

27, a copy of which is attached hereto as Exhibit D, (the Unpaved Road Ordinance). The road is built upon a county-owned right of way and is open to public use.

14. Because of the provisions of the Unpaved Road Ordinance, Farm & Grove must bear all the costs of the mad The cost is estimated as $29,000, which is $ 3,000 more than the ultimate fair market value of its lot. Moreover, since this ordinance, unlike the MSBU Ordinance, does not provide for cost sharing; Farm & Grove's neighbors will be unjustly enriched by the rise In market value of their lots and their immediate desirability and saleability, at no cost to themselves.

15. If the Unpaved Road Ordinance had a cost-sharing provision providing equitable contribution in the same manner as for paved roads under the MSBU ordinance, then the cost could be apportioned at $2,900 per lot, a reasonable burden. The enactment of such a cost-sharing provision was requested by Farm & Grove but was finally refused by the County Commission on October 17, 1995 (Exhibit E hereto). Farm & Grove has exhausted its administrative remedies and this matter is ripe for judicial review.

16. The actions of County have damaged Plaintiff as follows:

a) Such actions, by themselves, contravene the Constitution of the United States; and, especially, the 5th and 14th Amendments.

b) Such actions, by themselves, contravene the Constitution of the State of Florida.

c) Such actions, as applied to Plaintiff's property, contravene the Constitution of the United States, and, especially, the 5th and 14th

Amendments.

d) Such actions, as applied to Plaintiff's property, contravene the Constitution of the State of Florida.

e) Such actions deny the Plaintiff any reasonable and/or substantial economic use and/or value of its property.

f) Such actions are a thinly disguised method to create an unfair and illegal and confiscatory tax or condition upon Plaintiff's property which results in a permanent inordinate burden thereon.

g) Such actions have denied Plaintiff the use of its property without due process.

h) Such actions have denied Plaintiff of equal protection of the law.

i) Such actions are arbitrary and capricious as applied to Plaintiff's property.

j) Such actions constitute a taking by Inverse Condemnation without just compensation therefore.

k) Such actions have taken valuable property rights previously vested in Plaintiff without just compensation.

l) Such actions, if not permanent, amount to a temporary taking for which compensation is due.

17. Such actions violate Plaintiff's rights as protected by Title 42, Section 1981, et seq, of the United States Code and, especially, Section 1983.

COUNT I

Declaratory Relief

18. The actions complained of hereinabove require Plaintiff to have its rights, as pertains to the use of said

property, declared; and it seeks Declaratory Relief and ancillary relief pursuant to Chapter 86, Florida Statutes.

19. Because of the County's actions, Farm & Grove has been required to employ the services of the undersigned attorney and to pay a reasonable fee and to incur the costs of this suit. Such costs are to be paid by the taking authority (County) under the laws of Eminent Domain and per said Constitutions or as otherwise provided by law.

20. Farm & Grove demands trial by jury.

Wherefore, Farm & Grove prays that this Court will grant relief from such unreasonable restraint upon the use of its property by declaring the various acts and ordinances of the County to be unconstitutional, per se; or, as applied under these facts, as to this land; or will, in the alternative, declare such acts to constitute a taking and will award full compensation therefore. Farm & Grove prays for such further relief as may be appropriate in the circumstances.

COUNT II

Damages and Fees for Taking of Property Without Just Compensation in Violation of the Fifth and Fourteenth Amendments to the U.S. Constitution

21. By reason of the matters set forth above there is no way in which Farm & Grove may realize the use and/or investment-backed value of the property. Its value lies only by use as a single-family residence site. A residence can only be built if a road is installed per County ordinances and regulations. The cost of such a road exceeds the value of the lot in its saleable state. At the same time neighboring lot owners are now free to sell their property as residential lots

without contribution or assessment.

22. The result of this over-regulation and inequitable application is to effect a taking by County of said land without just compensation and contrary to the provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution.

23. Farm & Grove has been denied just compensation as required by law. Its only remedy is an award of lust compensation pursuant to the doctrine of inverse condemnation.

24. Because of the County's actions, Farm & Grove has been required to employ the services of the undersigned attorney and to pay a reasonable fee and to incur the costs of this suit. Such costs are to be paid by the taking authority (County) under the laws of Eminent Domain and per said Constitution or as otherwise provided by law.

25. Farm & Grove demands trial by jury.

Wherefore, Plaintiff prays that this Court will award just compensation for the taking, including interest, costs and fees. Farm & Grove prays for such further relief as may be appropriate in the circumstances.

COUNT III

Damages and Fees For Taking of Property Without Due Process In Violation of the Fifth and Fourteenth Amendments to the U.S. Constitution

26. The property of Plaintiff, which had previously been marketable as and valuable for a single-family residential home lot has, as the result of the aforesaid regulations applied thereto, been restricted to the point that its value has been lost.

27. That the regulatory taking of all value thereof constitutes a taking without due process as required by the U.S. Constitution; and, especially, the Fifth and Fourteenth Amendments thereto.

28. Because of the County's actions, Farm & Grove has been required to employ the services of the undersigned attorney and to pay

a reasonable fee and to incur the costs of this suit. Such costs are to be paid by the taking authority (County) under the laws of Eminent Domain and per said Constitution or as otherwise provided by law.

29. Farm & Grove demands trial by jury.

Wherefore, Plaintiff prays that this Court will award lust compensation for the taking, including interest, costs and fees. Farm & Grove prays for such further relief as may be appropriate in the circumstances.

COUNT IV

Unconstitutional As Arbitrary and Capricious

30. The effect of the regulations complained of require one property owner to bear the entire burden of a public improvement while at the same time increasing the value of his neighbors' properties without cost.

31. The imposition of such regulations are arbitrary and capricious, without basis in law or fact, and result in the denial to Plaintiff of its property without due process in violation of the U.S. Constitution; and, especially, the Fifth and Fourteenth Amendments thereto.

32. Because of the County's actions, Farm & Grove has been required to employ the services of the undersigned attorney and to pay a reasonable fee and to incur the costs of this suit. Such costs are to be paid by the taking authority (County) under the laws of Eminent Domain and per said Constitutions or as otherwise provided by law.

33. Farm & Grove demands trial by jury.

Wherefore, Plaintiff prays that this Court will find said regulations to be arbitrary and capricious, per se; or, as applied to Plaintiff's property, and will enjoin Plaintiff from enforcing same as applied to said property and will award Plaintiff damages, interest, costs and fees. Farm & Grove prays for such further relief as may be appropriate in the circumstances.

COUNT V

Denial of Equal Protection of the Law

34. The denial of the use of the MSBU Ordinance for property such as Plaintiff's, while allowing its use in similar areas for similar roads, is to create two classes and Plaintiff is in the class denied the rights thereof.

35. The structure of the Unpaved Road Ordinance which places the entire burden upon the first owner creates two classes of property affected thereby, one with 100% of the burden and one with no burden. Plaintiff's land is in the class with 100% of the burden.

36. Such regulations deny Plaintiff its rights of Equal Protection of the laws guaranteed by the U.S. Constitution; and, especially, the Fifth and Fourteenth Amendments thereto.

37. Because of the County's actions, Farm & Grove has been required to employ the services of the undersigned attorney and to pay a reasonable fee and to incur the costs of this suit. Such costs are to be paid by the taking authority (County) under the laws of Eminent Domain and per said Constitutions or as otherwise provided by law.

38. Farm & Grove demands trial by jury.

Wherefore, Plaintiff prays that this Court will find said regulations to be arbitrary and capricious, per se; or, as applied to Plaintiff's property, and will enjoin Plaintiff from enforcing same as applied to said property and will award Plaintiff damages, interest, costs and fees. Farm & Grove prays for such further relief as may he appropriate in the circumstances.

COUNT VI

Damages Per Title 42, Section 1981, USC et seq, For Denial of Civil Rights

39. This is a civil action for damages and Injunctive relief against said Defendants for acts committed under color of state law

which deprived Plaintiff of rights secured under the Constitution and Laws of the United States of America; and, especially, the Fifth and Fourteenth Amendments thereto; all with intent to deny Plaintiff its property without due process, without equal protection of the laws, and for refusing to prevent such deprivation and denial.

40. This action is brought pursuant to Title 42 United States Code, Sections 1981, et seq

41. At all times pertinent hereto Defendant, County, asserted governmental control over Plaintiff's property.

42. The enactment of the Ordinances and regulations specified above were intended to slow the growth in this part of Brevard County by denying fair and equal rights as granted to the rest of the land in the County.

43. The enactment of the ordinances and regulations specified above are an attempt to Impose an illegal, unequal, confiscatory, and unequitable tax upon Plaintiff's property.

44. As the results of the acts of these Defendants, Plaintiff has been denied of due process under the Constitution of the United States and per said laws and regulations.

45. As the results of the acts of these Defendants, Plaintiff has been denied of equal protection afforded by the Constitution of the United States and per said laws.

46. As the result of these acts of these Defendants, the value of Plaintiff's property has been severely diminished resulting in an appropriation without compensation as required by the United States Constitution and these laws and regulations.

47. The aforesaid acts, and the injuries suffered thereby are violations of the Constitution and laws of the United States and, especially, the Fifth and Fourteenth Amendments thereto as well as the Constitution of the State of Florida.

48. Relief for said acts is afforded by Title 42 Section 1981 et

seq of the United States Code.

49. Because of the County's actions, Farm & Grove has been required to employ the services of the undersigned attorney and to pay a reasonable tee and to incur the costs of this suit. Such costs are to be paid by the taking authority (County) under the laws of Eminent Domain per said Constitution, or per Title 42, Section 1988, or as otherwise provided by law.

50. Farm & Grove demands trial by jury.

Wherefore, Farm & Grove prays that this Court will grant relief from such unreasonable restraint upon the use of its property by declaring the various acts and ordinances of the County to be unconstitutional as applied under these facts as to this land; or will, in the alternative, declare such acts to constitute a taking and will award hill compensation therefore. Farm & Grove prays for such further relief as may be appropriate in the circumstances.

COUNT VII

Damages For Violation of Article 1, Sections 2, 9, and 10 of the Florida Constitution

51. This is a civil action for damages and injunctive relief against the Defendant for acts committed under color of state law which deprived Plaintiff of rights secured under the Constitution and laws of the State of Florida; and, especially, Article 1, Sections 2, 9, and 10 thereof; all with intent to deny Plaintiff's its property without due process, without equal protection of the laws and for refusing to prevent such deprivation and denial.

52. This action is brought pursuant to Article 1, Sections 2, 9, and 10 of the Constitution of the State of Florida.

53. At all times pertinent hereto Defendant, County, asserted governmental control over Plaintiff's property.

54. The enactment of the Ordinances and regulations specified above were intended to slow the growth in this part of Brevard County by denying fair and equal rights as granted to the rest of

the land in the County.

55. The enactment of the ordinances and regulations specified above are an attempt to impose an illegal, unequal, confiscatory, and unequitable tax upon Plaintiff's property.

56. As the results of the acts of these Defendants, Plaintiff has been denied of due process under the Constitution of the State of Florida and per said laws and regulations.

57. As the results of the acts of these Defendants, Plaintiff has been denied of equal protection afforded by the Constitution of the State of Florida and per said laws.

58. As the result of these acts of these Defendants, the value of Plaintiff's property has been severely diminished resulting in an appropriation without compensation as required by the Florida Constitution and these laws and regulations.

59. The aforesaid acts, and the injuries suffered thereby are violations of the Constitution and laws of the State of Florida; and, especially, Article 1, Sections 2, 9, and 10.

60. Because of the County's actions, Farm & Grove has been required to employ the services of the undersigned attorney and to pay a reasonable fee and to incur the costs of this suit. Such costs are to be paid by the taking authority (County) under the laws of Eminent Domain per said Constitution, or as otherwise provided by law.

61. Farm & Grove demands trial by jury.

Wherefore, Farm & Grove prays that this Court will grant relief from such unreasonable restraint upon the use of its property by declaring the various acts and ordinances of the County to be unconstitutional as applied under these facts as to this land; or will, in the alternative, declare such acts to constitute a taking and will award full compensation therefore. Farm & Grove prays for such further relief as may be appropriate in the circumstances.

/s/Edward C. Tietig

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

FARM & GROVE REALTY COMPANY,
Plaintiff,
v.
BREVARD COUNTY, a political subdivision of the State of Florida
Defendant
and
FARM & GROVE REALTY COMPANY,
Plaintiff,
v.
BREVARD COUNTY, et al
Defendants

Case No. 96-4509 CAD

Case No. 96-14296-CAM

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**MOTION FOR REHEARING**

Comes Now the Plaintiff, by and through its undersigned attorney, and brings this Motion to Rehear the Order entered by the Court on April 29, 1999, and in support thereof says:

1. Said Order does not contain a specification of the facts that appear without controversy as required by Rule 1.510(d). See Florida Department of Agriculture v. Go Bungee, Inc., 678 So 2d 920 (FLA DCA 5th, 1996) and cases collected therein.
2. Said Order fails to dispose of Plaintiff's Motion to Strike the Brief of Defendant, Brevard County for violation of Guidelines B2 of Florida Guidelines for Professional

Conduct in serving its brief at the commencement of the hearing when said hearing had been set by said Defendant more than 3 months prior to that date.

3. Said Order does not include disposition of Plaintiff's Motion to abate the Motions filed by Defendant, Brevard County, based upon its failure to make discovery prior to said hearings. (Kingswood South, Inc., v. J.I. Case Credit Corporation, 623 So 2d 584 (FLA DCA 4th, 1993).

4. Said Order is contrary to the manifest weight of the evidence.

/s/
Edward C. Tietig, P.A.

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
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FARM & GROVE REALTY COMPANY,
Plaintiff
v.
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Defendant

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Defendants

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/

**MEMORANDUM OF PLAINTIFF AS TO ISSUES TO BE RESOLVED AT REHEARING**

This Court's Order of April 29, 1999 left a number of issues unaddressed; while, at the same time, it created new issues. We submit the following as a suggested list of the matters to be decided by this Court upon rehearing:

1. Was the Road suit complaint affected?
2. Was the Federal condemnation action plead in Count I affected?
3. Does the holding of the City of Monterey v. Del Monte Dunes at Monterey, Ltd, 119 S Ct 1624, heretofore submitted affect the Order?

4. Does the holding of Sanchez v. Degoris, 1999 WL 314133 (Fla App 4th Dist 1999) affect Judge Moxley's Order as to the Section 1983 punitive damages count; and, thereby this Court's Order?
5. Does the Dismissal of Counts II and III now make the severance of 2 suits proper as the identity of issues is not gone?
6. The Order contained no ruling regarding Plaintiff's Motion to Strike County's brief.
7. The Order contained no ruling regarding Plaintiff's Motion to Abate for County's failure to make discovery.
8. What are findings of fact used by Court to support the Order?
9. Where is there no issue of fact which allows the Counts II and III to be dismissed?

/s/
Edward C. Tietig, P.A.